IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.297 OF 2006

Hindustan Petroleum Corporation Ltd. ...Petitioners

v/s

International Cylinders (P) and anr. ...Respondents

Mr M.D. Siodia i/b M/s Rustamji and Ginwala for Petitioners.

Ms Alpana Ghone for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 25TH SEPTEMBER 2006.

P.C. :-

1. By this petition, filed under section 34 of the Arbitration and Conciliation Act 1996, the petitioners challenge the interim award passed in the reference by the sole Arbitrator. The dispute that is pending is what should be the price of the cylinders supplied by the claimants / respondents to the petitioners and what is the amount of escalation in price which claimants are entitled. While the said disputes were pending before the learned Arbitrator, a letter dated 18th November 2003 was written by the respondents to the claimants which has been quoted by the learned Arbitrator. It was stated in that letter that so far as the claim from 1st April 2000 to 31st March 2001 is concerned, rate of per cylinder offered is Rs.645/- plus escalation amount of Rs.17.20. If it is agreeable, then the claimants should submit their demand and payment should be made. It was made clear that this offer is subject to written confirmation from the claimants that upon such payment being made, the entire claim will be taken as settled and there will be no further claim in relation to that period against the petitioners. The learned Arbitrator, by the interim award, has held that the letter amounts to an admission on behalf of the petitioners, that so far as the period

from 1st April 2000 to 31st March 2001 is concerned, the rate of the cylinder would be Rs.645/- per cylinder plus Rs.17.20 as escalation. The case of the petitioners was that this was a conditional offer and this offer was made subject to the condition that on payment being made at the aforesaid rate, the dispute will be taken as resolved. This offer was not accepted by the claimants and therefore, the Arbitral Tribunal could not have made its award only on the basis of the letter. Perusal of the letter shows that there is a condition incorporated in third paragraph of the letter. According to the learned Arbitrator, because he has not come across any evidence that efforts were being made to resolve the disputes and this letter was written in the direction of resolution of dispute, it is not a conditional offer. In my opinion, the reason given by the learned Arbitrator for holding that this was not a conditional offer is not sound because the letter says that if this offer is accepted and payment pursuant to that offer is accepted, then the dispute will come to an end. Therefore, on the face of the letter itself, it was clear that this letter was written to bring an end to the dispute. In my opinion, on the basis of the letter, no award could not have been made by the learned Arbitrator. This interim award operates by itself and is not subject to the final award that is to be made. As the offer contained in the letter was a conditional

offer, the letter could not have been made the sole basis of an arbitral award. The interim award therefore is infirm and is liable to be set aside. It is accordingly set aside. The respondents are directed to pay costs of this petition to the petitioners as incurred by the petitioners.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.